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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 175

TRAVELERS INSURANCE COMPANY, *Petitioner,*

v.

WALTER J. TONER, Deputy Commissioner, United States Employees' Compensation Commission, and ELIZABETH H. FREDERICKS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARTHUR J. PHELAN,
FRANK F. ROBERSON,
Counsel for Petitioner.

July 6, 1951.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To The Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Travelers Insurance Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above captioned case on May 24, 1951.

Opinions Below

Without written opinion the United States District Court for the District of Columbia dismissed petitioner's complaint which sought an injunction against enforcement of a workman's compensation award. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 18-19) is not yet reported.

Jurisdiction

The judgment of the Court of Appeals was entered on May 24, 1951 (R. 20). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

Questions Presented

1. Whether the enlarged death benefits provided by the June 24, 1948, amendment[1] to the Longshoremen's and Harbor Workers' Compensation Act[2] are properly awarded where the causating injury was sustained before, although the death occurred after, the effective date of the amendatory act.

2. Whether, in interpreting language of the Amendatory Act of June 24, 1948, that its provisions

> "shall be applicable only to injuries or deaths occurring on or after the effective date hereof,"[3]

the courts below erred in failing to apply the expressed congressional intention that

> "* * * it is necessary and desirable to make the act prospective in its application in order to avoid administrative difficulties and constitutional questions which might be presented by a

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[1] Public Law 757, 80th Cong., 2d Sess., 62 Stat. 602, 33 U. S. C. A. §§ 906, 909 (Cum. Supp. 1950).

[2] Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. § 901 *et seq.*

[3] Section 6, Act of June 24, 1948, *supra*, note 1, 33 U. S. C. A. § 906 note (Cum. Supp. 1950).

retrospective change in the compensation provisions. Furthermore, *prospective application will enable employers to make adjustments in employee-compensation coverage to reflect the changes.*" [4] (Emphasis Added)

Statute Involved

The statute involved is the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. § 901 *et seq.* (1940), which was amended to enlarge the scale of benefits by the Act of June 24, 1948, 62 Stat. 602, 33 U. S. C. A. §§ 906, 909 (Cum. Supp. 1950). The pertinent part of the Amendatory Act of June 24, 1948, is Section 6, which reads:

> The provisions of this Act shall be applicable only to injuries or deaths occurring on or after the effective date hereof.

Statement

Walter J. Toner, Deputy Commissioner, United States Employees' Compensation Bureau, District of Columbia Compensation District, made a finding that William W. Fredericks, Jr., an employee of a corporation for which petitioner, Travelers Insurance Company, carried the workmen's compensation coverage, was injured in his employment January 29, 1947, partially recovered, then as a result of the injury died July 1, 1949 (R. 8-9). Upon these findings Toner made an award to Elizabeth H. Fredericks, for herself as widow and for the children of the deceased employee, which included death benefits based upon a scale greater than that prevailing under the Longshoremen's and Harbor Workers' Compensation Act as it existed on the date of the fatal injury (R. 10). Under the act as it existed in January, 1947, Mrs. Fredericks was entitled to receive a maximum of $7,500. Under the award she is entitled to be paid compensation until she either dies or remarries irrespective of the amount of money to which such payments run.

[4] H. R. Rep. No. 2095, 80th. Cong., 2d Sess. 9 (1948).

Petitioner filed a complaint in the United States District Court for the District of Columbia for a mandatory injunction directed against Toner pursuant to the review provided for in the Act of March 4, 1927, 44 Stat. 1436, 33 U. S. C. § 921 (1940) (R. 4-7). One of the grounds urged for the relief sought was that the compensation award was based, not upon the legal schedule of death benefits in effect on January 29, 1947, date of the injury, but upon a greater scale of benefits contained in the Amendatory Act of June 24, 1948, 62 Stat. 602, 33 U. S. C. A. §§ 906, 909 (Cum. Supp. 1950) (R. 6). Mrs. Fredericks having been granted leave to intervene (R. 12), she and Toner filed motions to dismiss the complaint (R. 13-14). The District Court entered a final order dismissing the complaint (R. 14). From so much of the order as affirmed the Deputy Commissioner, Toner, in applying a scale of death benefits not in existence at time of the fatal injury, an appeal was taken (R. 15).

On appeal, in affirming the District Court, the court below disregarded the fact that the legislative history of the amendatory act had not been made available to other courts passing upon the question,[5] erroneously stated that "no court has held to the contrary" (R. 19) and elected to follow the decisions of the Third and Fourth Circuits (R. 19).

Specification of Errors to be Urged

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that a scale of benefits enacted by the Congress on June 24, 1948, applied to a 1949 death caused by a 1947 injury.

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[5] None of the opinions relied upon by the court below as deciding the "precise question" involved herein mentions the legislative history which makes clear an opposite Congressional intent. *Penn Jersey Welding Co.* v. *Lowe*, 182 F. 2d 936 (3d Cir. 1950); *Hampton Roads Stevedoring Corp.* v. *O'Hearne*, 184 F. 2d 76 (4th Cir. 1950) (reversing E. D. Va., which had ruled in accordance with petitioner's interpretation even in the absence of the legislative history); *Brown-Pacific Maxon Co.* v. *Cardillo*, 91 F. Supp. 968 (S. D. N. Y. 1950). An examination of the briefs filed on behalf of the employers in the appellate courts reveals that those courts were not given the benefit of the expression of congressional purpose.

2. In failing to give effect to the congressionally expressed intent that the effective date provision of the amendatory act would "enable employers to make adjustments in employee-compensation coverage."

3. In affirming the District Court judgment insofar as it denied an injunction against enforcement of an award which applied retrospectively an inapplicable scale of death benefits.

Reasons for Granting the Writ

This case presents a question of national importance in the administration of federal workmen's compensation laws.[6] The decision below fails to give effect to a clear expression of congressional intent with respect to a national statute and, in following federal decisions which had been predicated upon inadequate information, serves to congeal into the federal law an erroneous interpretation of a widely applicable statute. That there will arise for some time in the administration of the Longshoremen's and Defense Bases Acts cases of lingering illnesses, originating with injuries prior to June 24, 1948, and culminating in deaths thereafter, is obvious. That survivors will in many cases seek to relate unrelated deaths back to remote injuries in order to receive a multiplied scale of benefits

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[6] While this immediate case is under the District of Columbia Workmen's Compensation Law [Act of May 17, 1928, 45 Stat. 600, § 501 D. C. CODE, tit. 36, (1940)], that Law merely extends to the District of Columbia the basic federal statute, the Longshoremen's and Harbor Workers' Compensation Act. This factor was commented on by the Court in *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285 (1935):

> In the view that the case does not fall within Rule 38, the respondent opposed the issuance of a writ of certiorari. The objection might be valid if the statute were confined in its operation to the District of Columbia. We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District. The Longshoremen's and Harbor Workers' Compensation Act, however, is national in scope, and a decision with respect to its enforcement constitutes a precedent of general application. We therefore granted the writ because of the important question as to the effect of § 20(d).

Moreover the basic Longshoremen's Act was likewise extended to other areas by the Defense Bases Act of August 16, 1941, 55 Stat. 622, 42 U. S. C., Supp. IV, § 1651 *et. seq.*

never contemplated by employees, employers, or Congress at the time of the alleged fatal injuries seems equally apparent.

The gross injustice of converting potential maximum liabilities of employers for $7,500 for an injury and an additional $7,500 where the injury results in death into a potential "open-end" liability of many times $15,000, presents multiple administrative and constitutional difficulties. To mention just one instance, such would be the case where the original insurance carrier has gone off the risk between the time of an injury and the time of death and the employer went out of business prior to June, 1948. In many cases there obviously has not been available the opportunity "for employers to make adjustments in employee-compensation coverage to reflect the changes" which Congress desired. This injustice occurs only because the courts below have applied the amendatory act retrospectively rather than prospectively as Congress intended. It was recently said in *Universal Camera Corporation* v. *National Labor Relations Board,* 340 U. S. 474, 489 (1951):

> The legislative history of these Acts demonstrates a purpose to impose on courts a responsibility which has not always been recognized. Of course it is a statute and not a committee report which we are interpreting. But the fair interpretation of a statute is often "the art of proliferating a purpose," *Brooklyn National Corp.* v. *Commissioner,* 157 F. 2d 450, 451, revealed more by the demonstrable forces that produced it than by its precise phrasing.[7]

[7] The demonstrable forces that produced Section 6, the "effective date" clause, are plain from the legislative history of Senate Bill 2237, 80th Cong., 2d Sess.—which ultimately became the Act of June 24, 1948. As originally introduced February 27, 1948, S. 2237 contained no effective date clause. No doubt this was due to the long established principle that, absent unmistakable legislative intent, statutes are not to be construed as retrospective. *United States* v. *Heth,* 3 Cranch 399, 413 (1806).

Section 6 first appeared in the proposed bill after a representative of the New York Shipping Association in April, 1948, so recommended by oral testimony and memorandum brief in the course of the April, 1948, *Hearings before a Sub-committee of the Senate Committee on Labor and Public Welfare on S. 2237 and Related Bills,* 80th Cong., 2d Sess. 56, 62 (1948):

> It is further suggested that the act specifically state that the proposed increases in compensation be applicable only to cases where the injury occurred after the effective date of the amendment.

The opinion of the court below (R. 19, note 5) admitted the congressional intent revealed in the committee reports but then declined to settle the basic issue of applying that intent by stating:

> We regard this material as indicating the desire of Congress to avoid retroactive application of the amendatory act, as well as to avoid administrative difficulties and constitutional questions. But such matters are not directly involved in the instant proceeding, and we do not find anything in the legislative history which requires us to give a strained construction to what we regard as the clear language of section 6 of the amendatory act.

The court below thus expressly recognizes that administrative difficulties and constitutional questions will arise from retroactive application of the amendatory act. These difficulties are bound to result in further litigation. All of these can be obviated by following the intent of Congress. A chronological study of the related bills which culminated in the addition of Section 6 to the Amendatory Act of June 24, 1948, makes simple the task of proliferating the congressional purpose to apply the increased benefits prospectively only. Since effectuation rather than frustration of legislative purpose is the recognized aim of statutory interpretation, the basic issue of retroactivity involved in this and like cases should be faced and decided now.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARTHUR J. PHELAN,
FRANK F. ROBERSON,
Counsel for Petitioner.

July 6, 1951.

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In the Supreme Court of the United States

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TRAVELERS INSURANCE COMPANY, PETITIONER

v.

WALTER J. TONER, DEPUTY COMMISSIONER, UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, AND ELIZABETH H. FREDERICKS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

OPINION BELOW

The District Court dismissed petitioner's complaint without an opinion (R. 14). The *per curiam* opinion of the Court of Appeals for the District of Columbia Circuit, affirming the judgment of the lower court (R. 18-19), is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1951 (R. 20). The petition for a writ of certiorari was filed on July 6, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED

Whether death benefits payable to a workman's widow under Section 9 of the Longshoremen's and Harbor Workers' Compensation Act [1] should be measured by the provisions of that Section in effect at the time the workman was injured or by the more liberal provisions of the Section as amended after his injury but before his death.[2]

STATUTE INVOLVED

The statute involved is the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, as amended by the Act of June 24, 1948, 62 Stat. 602, 33 U. S. C., Supp. IV, 906, 909. The pertinent provision of the Amendatory Act of June 24, 1948, is Section 6, which reads:

> The provisions of this Act shall be applicable only to injuries or deaths occurring on or after the effective date hereof.

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[1] Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*

[2] 44 Stat. 1424 (1927), as amended by the Act of June 24, 1948, 62 Stat. 602, 33 U. S. C., Supp. IV, 909.

STATEMENT

This is an action to review and set aside a death benefit award order of respondent, Walter J. Toner, Deputy Commissioner, Bureau of Employees' Compensation, District of Columbia Compensation District. On January 29, 1947, William W. Fredericks, Jr., an employee of a corporation for which petitioner, Travelers Insurance Company, carried the workmen's compensation coverage, was injured while in the course of his employment. On behalf of the employer, petitioner paid Fredericks the sum of $2,254.63, which was the amount to which he was entitled as compensation for periods of illness between the date of injury, January 29, 1947, and the date of his death, resulting from the injury (as found by the Deputy Commissioner, R. 8-9), on July 1, 1949. On June 24, 1948, one year prior to Fredericks' death, the Longshoremen's and Harbor Workers' Compensation Act was amended so as to provide, *inter alia,* enlarged death benefits.[3] In a

[3] The amendatory Act increased maximum funeral expenses allowable from $200 to $400; increased benefits for children of deceased workmen from 10% to 15% of the average wage of deceased; and increased the benefits of orphaned children from 15% to 35% of the average wage of deceased. In addition, it provided that in computing death benefits, the average weekly wage of the deceased be considered to have been not more than $52.50 nor less than $18, while the original Act provided that the average weekly wage of the deceased be considered to have been not more than $37.50 nor less than $12. See 62 Stat. 602-603 (1948), 33 U. S. C., Supp. IV, 909(a), (b), (c), and (e).

The original Act also provided that the total compensation payable for injury or death should not exceed the sum of $7,500, 44 Stat. 1434 (1927), 33 U. S. C. 914(m), while the amendatory Act provides that the maximum limitation

claim for compensation under the District of Columbia Workmen's Compensation Act[4] by the widow of the deceased on behalf of herself and for the children of the deceased employee, the Deputy Commissioner awarded the claimant the enlarged benefits in effect at the time of the death of the deceased[5] (R. 9-10).

Petitioner filed a complaint in the United States District Court for the District of Columbia for an injunction requiring defendant to set aside the compensation award (R. 4-7). The District Court granted a motion (R. 13-14) of respondents Toner and Mrs. Fredericks, who had been permitted to intervene (R. 11-12), to dismiss the complaint (R. 14). Petitioner appealed from so much of the judgment of the court as affirmed the Deputy Commissioner's application of the increased scale of benefits contained in the amendments to the Longshoremen's and Harbor Workers' Compensation

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for disability is $11,000 and provides that such limitation shall not apply in case of death. 62 Stat. 603 (1948), 33 U. S. C., Supp. IV, 914(m).

[4] Act of May 17, 1928, 45 Stat. 600, D. C. Code (1940), § 36-501, extending to the District of Columbia the basic federal statute, the Longshoremen's and Harbor Workers' Compensation Act.

[5] If the original Act had been in force at the time of the death of Fredericks, the deceased employee in the instant case, his widow would have been entitled to receive funeral expenses not exceeding $200.00 and $13.12 per week during widowhood, the total not to exceed $7500.00, while each surviving child was entitled to $5.25 per week. Under the amended act in force at the time of death of the deceased, the widow was awarded reasonable funeral expenses not exceeding $400.00 and compensation at the rate of $18.38 per week during widowhood without maximum limitation, while each surviving child was awarded $7.88 per week.

Act, enacted June 24, 1948 (R. 15). The Court of Appeals, in a *per curiam* opinion, affirmed the lower court's judgment (R. 18-19).

ARGUMENT

In amending the Longshoremen's and Harbor Workers' Compensation Act, Congress expressly covered the matter of the effective date of the amendment, stipulating that the provisions of the amendatory Act "shall be applicable only to injuries or deaths occurring on or after the effective date hereof."[6] This case is one of "death occurring after the effective date" of the Act. As pointed out by the Court of Appeals, "the precise question" raised by petitioners "has been answered in the affirmative by several Federal courts"[7] and there is thus no conflict of decisions calling for resolution. It is submitted that the Deputy Commissioner was clearly correct in awarding benefits at the rates in effect at the date of death and that review by this Court is not warranted.

To avoid the consequences of the express declara-

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[6] 62 Stat. 604 (1948), § 6, 33 U. S. C., Supp. IV, 906 note.

[7] R. 19, citing *Penn Jersey Welding Co.* v. *Lowe*, 183 F. 2d 936 (C. A. 3, 1950); *Hampton Roads Stevedoring Corp.* v. *O'Hearne*, 184 F. 2d 76 (C. A. 4, 1950); *Brown-Pacific Maxon Co.* v. *Cardillo*, 91 F. Supp. 968 (S. D. N. Y., 1950). The Court of Appeals in the present case stated that "we are satisfied that the cited decisions of the Third and Fourth Circuits and of the District Court for the Southern District of New York are correct and should be followed." (R. 19.) A very recent case in the United States District Court for the Western District of Washington holding to the same effect on this point is *Lewis Drake Puget Sound* v. *O'Leary*, Civil No. 2524, decided June, 1951.

tion of the Act, petitioner is forced to argue, in effect, that "deaths occurring after the effective date" must mean "deaths resulting from injuries which occurred after the effective date" and that the result reached by the court gives an improper retroactive effect to the amendment. Congress could have indicated such a limitation quite simply if it had so intended by merely omitting the phrase "or deaths" entirely. The interpretation proposed by petitioners would change the clear meaning of the legislation.

Moreover, the conclusion reached by the Court of Appeals has been held as not giving retroactive effect to the amendment to the Act, as urged by petitioner.[8] *Hampton Roads Stevedoring Corp.* v.

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[8] Petitioner relies on two statements from the legislative history of the amendment. The first statement from H. Rep. No. 2095, 80th Cong., 2d Sess., 9 (1948) states:

> Section 6: Section 6 of the bill, as introduced, provides that H. R. 6647 shall be applicable only to injuries or deaths occurring on or after its effective date. Your committee believes that it is necessary and desirable to make the act prospective in its application in order to avoid administrative difficulties and constitutional questions which might be presented by a retrospective change in the compensation provisions. Furthermore, prospective application will enable employers to make adjustments in employee-compensation coverage to reflect the changes.

The approval of the provision that "the bill * * * shall be applicable * * * to deaths occurring on or after its effective date" in the same paragraph which discusses an intention not to make the amendment operate retroactively supports the inference that Congress considered the death benefits as separate and apart from the provisions for injuries and as not operating retroactively.

The second statement quoted by petitioner is from oral testimony in the April, 1948, *Hearings before a Sub-committee of*

O'Hearne, 184 F. 2d 76 (C. A. 4, 1950). By the specific wording of the amendment it is applicable to "deaths occurring on or after" June 24, 1948. The death of the injured employee in the instant case occurred July 1, 1949, rendering the provisions of the amendatory act applicable.

The conclusion reached by the court on this question is also consistent with the plan of the Longshoremen's and Harbor Workers' Compensation Act and the construction given it in other connections. The Act has been construed by the courts as giving two separate rights, one providing for compensation for injuries received by the employee and payable to the injured employee (Section 8, entitled "Compensation for Disability") and the other providing for death benefits payable to the dependents of the injured employee (Section 9, entitled "Compensation for death"). The two sections have been construed as being completely sepa-

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the Senate Committee on Labor and Public Welfare on S. 2237 and Related Bills, 80th Cong., 2d Sess., 56, 62 (1948) and reads:

> It is further suggested that the act specifically state that the proposed increases in compensation be applicable only to cases where the injury occurred after the effective date of the amendment.

The full paragraph, not quoted by petitioner, explains clearly that the Committee was considering compensation for injuries only and not compensation for death. The rest of the paragraph reads:

> The industry does not wish to be confronted with a law that would encourage malingering and self-induced injury, and defeat the intent and purpose of the Longshoremen's and Harbor Worker's Compensation Act. It is fearful that the proposed amendments may produce such a result.

rate and the courts have been uniform in holding that the right of the employee's widow and dependent children to recover death benefits does not arise until the date of the employee's death, when "a new cause of action arises." *International Mercantile Marine Co.* v. *Lowe,* 93 F. 2d 663, 665 (C. A. 2, 1938), certiorari denied, 304 U. S. 565; *Hitt* v. *Cardillo,* 76 App. D. C. 334, 131 F. 2d 233 (1942), certiorari denied, 318 U. S. 770. See also *Norton* v. *Travelers Insurance Co.,* 105 F. 2d 122 (C. A. 3, 1939). Courts have recognized this distinction in interpreting provisions of Section 14(m) that "the total compensation payable under this Act for injury or death shall in no way exceed the sum of $7,500." The above three cases held that compensation for injury under Section 8 does not prevent the full amount of $7500.00 from being paid in death benefits under Section 9.[9]

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[9] The decision is also in accord with the policy of the law, as expressed by this Court, to give a liberal interpretation to the provisions of this Act. In *Baltimore & Philadelphia Steamboat Co.* v. *Norton,* 284 U. S. 408, 414, this Court stated: "Such laws [the Longshoremen's and Harbor Workers' Compensation Act] operate to relieve persons suffering such misfortunes of a part of the burden and to distribute it to the industries and mediately to those served by them. They are deemed to be in the public interest and should be construed liberally in furtherance of the purpose for which they were enacted and, if possible, so as to avoid incongruous or harsh results."

CONCLUSION

The decision below is correct and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST, 1951.

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